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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932

No. 760

AARON MINTZ AND LOUIS MINTZ, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MINTZ & MINTZ, APPELLANTS,

vs.

CHARLES H. BALDWIN, INDIVIDUALLY AND AS COMMISSIONER OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK.

JURISDICTIONAL STATEMENT.

Appellants, plaintiffs below, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully show:

I.

Statutory provision believed to sustain the jurisdiction:

Sections 238 and 266, Judicial Code, as amended by Act of February 13, 1925;
28 U. S. Code, Sections 345 and 380.

II.

Statute of the State and order issued by appellee, defendant below, thereunder, the validity of which order is involved:

Sections 72 and 74 of the Agriculture and Markets Law of the State of New York, being Chapter 69 of the Consolidated Laws of said State, as enacted by Chapter 48 of the New York Laws of 1922, which appear at pages 105-107 of Volume I of the New York Sessions Laws of 1922 and read as follows:

"§ 72. *Control and Suppression of Disease.*— The commissioner may cause investigations to be made as to the best method for the control, suppression or eradication of infectious or communicable disease affecting domestic animals. Whenever any infectious or communicable disease affecting domestic animals shall exist or shall have recently existed outside this state, the commissioner shall take measures to prevent such disease from being brought into the state. Whenever any such disease shall exist or be brought into or break out in this state, the commissioner shall take measures promptly to suppress the same and to prevent such disease from spreading. He may issue and publish a notice stating that a specified infectious or communicable disease exists, may exist or has recently existed in the state, or in any designated county or other geographical district thereof, and warning all persons to seclude, in the premises where they may be at the time, all animals within this state, or within such county or dis-

trict, or an adjoining county or district, that are of a kind susceptible to contract such disease; and ordering all persons to take such precautions against the spreading of the disease as the nature thereof may, in his judgment, render necessary or expedient and which he may specify in such notice. Such notice shall be published in such manner as the commissioner may designate. The commissioner may cause such notice to be posted on public service poles other than those carrying wires transmitting electricity for light or power, or on fences on the highway or on buildings abutting upon the highways, provided, if such fences or buildings be personally owned, the owners thereof consent to such posting. No person shall tear down, mutilate, deface or destroy and such notice or order issued by the commissioner and posted as provided herein, during the pendency of such notice or order. The commissioner may alter or modify, from time to time, as he may deem expedient, the terms of any notice or order issued or made pursuant to this article and may at any time cancel or withdraw the same. The commissioner may, in behalf of the State, accept, in whole or in part, rules and regulations adopted by secretary of agriculture of the United States under any act of Congress providing for the control, suppression or eradication of communicable diseases in domestic animals, and he may co-operate with the authorities of the United States Government within this state in the carrying out of such rules and regulations and the enforcement of the provisions of any such act so passed which are not in conflict with the statutes of this State."

"§ 74. *Regulations Relating to Importation.*— The following regulations shall apply to the importation of domestic animals:

1. No person shall knowingly bring into this state any domestic animal which has an infectious or communicable disease, except in the case of pure bred registered bovine animals which have been removed from this state and have reacted to the tuberculin or other recognized test subsequent to such removal, may be returned to this state upon written permission from the commissioner subject to such rules as he may prescribe in relation thereto.

2. Any person bringing into this state domestic animals for any purpose other than immediate slaughter without taking precaution to ascertain whether such animals have an infectious or communicable disease shall be presumed to have brought them in knowingly in violation of this section, if they are found to have such disease.

3. Animals received from outside the state under the supervision of the United States department of agriculture or the department of agriculture and markets of the state of New York, or for which a permit or certificate shall have been issued by either of such departments, shall be deemed to have been handled with due precaution.

4. Any person importing or bringing into this state neat cattle for dairy or breeding purposes shall report immediately upon bringing such cattle into the state to the department, in writing, stating the number of cattle thus brought

in, the places where they were procured, the lines over which they were brought, their destination within the state and when they will arrive thereat; and if there be filed with the department at the time of filing such report or within ten days thereafter, a certificate by a duly authorized veterinary practitioner approved by the authorities of the state in which he resides or by an authorized veterinary inspector of the United States bureau of animal industry to the effect that he has duly examined such animals and that they are free from any infectious or communicable disease, the commissioner may issue a permit to such person to remove such cattle immediately. Otherwise such person shall detain such animals at the point of destination for at least twenty days for inspection or examination by the commissioner or his duly authorized agent. The provisions of this subdivision relating to advance reports to the department shall not apply to cattle imported into this state at a point where there is federal inspection.

5. Persons bringing into this state or receiving domestic animals from without the state shall give such other information to the department as it may from time to time request relating to such animals.

6. The commissioner may order all or any animals coming into the state to be detained at any place or places for inspection and examination, and if any of them after due examination be found affected with any infectious or communicable disease, such animals shall be condemned and slaughtered or held in strict quarantine.

7. Each animal brought into the state in violation of any of the provisions of this article shall constitute a separate and distinct violation.

8. Nothing contained in this section shall be construed to prevent or make unlawful the transportation of domestic animals through this state on railroad or boats."

The order promulgated by defendant August 29, 1932, effective October 1, 1932, reads as follows:

"State of New York,

Department of Agriculture and Markets,

Charles H. Baldwin, Commissioner.

In the Matter of the Control of Bang's Disease (Bovine Infectious Abortion).

It appearing that Bang's disease, an infectious and communicable disease affecting domestic animals, exists outside of the state of New York in areas from which cattle are or may be imported into this state,

Now, therefore, to prevent the bringing into this state of such disease, and in pursuance of the authority conferred upon me by Sections 72 and 74 of the Agriculture and Markets Law, I do hereby order that all bovine animals coming into the State of New York shall comply with the following requirements:

All cattle over six months of age imported for dairy or breeding purposes shall come directly from herds certified to be free from Bang's disease by the chief livestock sanitary official by whatever name known of the country, province

or state of origin. Such animals at the time of import must be accompanied by a certificate authenticated by such livestock sanitary official showing the name and address of the laboratory or person making the last blood test on such herd with a complete statement of the results of such test on the animals so imported. Such certificate shall describe each animal in such manner as to enable its identification by ear tag number, name and registration number in the case of pure breds and ear tag number in the case of grades. Such certificate shall include or be accompanied by the certificate above mentioned as to freedom of the herd from Bang's disease. A duplicate of such authenticated certificate or certificates must be filed with the Department of Agriculture and Markets, Albany, N. Y., by the consignee at the time the shipment is received, unless such duplicate has previously been filed by the consignor.

This order shall not apply to the following classes of bovine animals:

(*a*) Cattle for immediate slaughter, consigned to the public stock yards.

(*b*) Steers and beef type cattle for feeding and grazing purposes.

This order shall take effect October 1, 1932.

Dated Albany, N. Y., August 29, 1932.

CHARLES H. BALDWIN,

Commissioner of Agriculture and Markets."

III.

Date of decree sought to be reviewed: February 24, 1933. Entered March 1, 1933.

IV.

Date of presenting application for appeal: March 2, 1933.

V.

Statement showing nature of case and rulings of District Court:

Plaintiffs, citizens and residents of Wisconsin, copartners in trade in the breeding and in the selling and transportation in interstate commerce of cattle for dairy and breeding purposes, brought this civil suit in equity arising under the Constitution and laws of the United States to obtain a final decree of injunction against the Commissioner of Agriculture and Markets of the State of New York. Their cattle are purchased or bred and are located in Wisconsin, whence they ship annually to buyers in New York upwards of a thousand head of cattle. At great expense, plaintiffs have built up and developed in the State of New York, among buyers of plaintiffs' cattle for dairy and breeding purposes, a valuable trade and good will which exceeds three thousand dollars ($3,000) in value.

Defendant, as Commissioner of Agriculture and Markets of the State of New York, with his principal office at Albany, in the Northern District of New York, is chief executive officer of the New York Department of Agriculture and Markets; he is charged with the duty of providing generally for the exercise of the powers and the performance of the duties of said department; and to that end he is authorized to enact, amend and repeal necessary rules.

Under date of August 29, 1932, defendant, purporting to act as such Commissioner and in pursuance of sections 72 and 74 of the Agriculture and Markets Law of the State of New York (hereinbefore set forth), promulgated, published and posted an order, effective October 1, 1932, and designated herein as "said order", a copy whereof is hereinbefore set forth.

On or about October 21, 1932, plaintiffs shipped from Appleton, Wisconsin, to one Edgar Bartlett, at Sharon Station, New York, twenty head of grade cattle for dairy and breeding purposes, all over six months of age, which, at the time of their arrival at Sharon Station, were accompanied by a certificate authenticated by the chief live stock sanitary official of Wisconsin, showing the name and address of the laboratory or person making the last blood test on those twenty head of cattle, with a complete statement that the results of such test showed each of said animals to be free from Bang's disease. Such certificate described each of those twenty head of cattle in such manner as to enable its identification by ear tag and a duplicate of such certificate was filed by plaintiffs with the New York Department of Agriculture and Markets, at its office in Albany, on or about October 23rd, 1932.

Because said certificate neither included nor was accompanied by any certificate that the herd from which those twenty head of cattle came was free from Bang's disease, defendant, upon the arrival of the twenty head of cattle at Sharon Station, New York, and before delivery thereof to Edgar Bartlett, their con-

signee, issued, on October 26, 1932, what he denominated a "Quarantine Order", which prevented plaintiffs from delivering any of those twenty head of cattle to their consignor, and compelled plaintiffs, at great pecuniary loss, to reship all of the cattle from Sharon Station and to transport them to a point outside New York.

Plaintiffs' business has already been injuriously affected by defendant's said order, since it has stopped the sale and transportation of plaintiffs' cattle from Wisconsin into New York, has resulted in a loss to plaintiffs of orders for cattle from plaintiffs' customers in New York, has compelled plaintiffs to cancel their acceptance of such orders, and has prevented plaintiffs from filling orders which they have received from customers in New York for several carloads of cattle to be shipped from Wisconsin to New York for dairy and breeding purposes.

By an Act, entitled "An Act to enable the Secretary of Agriculture to more effectually suppress and prevent the spread of contagious and infectious diseases of live stock, and for other purposes", passed February 2nd, 1903 (21 United States Code, Sections 120, 121 and 122, as amended by the Act of Congress passed February 7th, 1928), Congress has authorized and directed the Secretary of Agriculture to establish such rules and regulations concerning the transportation of live stock from any place within the United States where he may have reason to believe dangerous, contagious, infectious or communicable diseases

among such live stock may exist, into and through any State or territory as he may deem necessary, and has provided that whenever any inspector of the Bureau of Animal Industry shall issue a certificate showing such officer had inspected any cattle or live stock, which were about to be driven or transported from any such locality into another, as above set forth, and had found them free from infectious, contagious, or communicable disease, the animals so inspected and certified may be shipped, driven or transported from any such place into and through any state or territory without further inspection.

By an Act, entitled "An Act to enable the Secretary of Agriculture to establish and maintain quarantine districts, to permit and regulate the movement of cattle and other live stock therefrom, and for other purposes", passed March 3rd, 1905 (21 United States Code, Sections 123, 124, 125, and 126, as amended by the Act of Congress passed February 7th, 1928), Congress has authorized and directed the Secretary of Agriculture to quarantine any State or Territory, or portion thereof, when he shall determine the fact that cattle or other livestock in such State or Territory are affected with any contagious, infectious, or communicable disease, and when the public safety will permit, make rules and regulations permitting and governing the inspection, disinfection, certification, treatment, handling, and method and manner of delivery and shipment from any quarantined State or Territory into another State or Territory.

Plaintiffs contend:

1. That Congress, by enacting the two acts hereinbefore last set forth, has assumed control of the entire field of transportation and quarantine of live stock which is the subject of commerce between the States, in so far as action to prevent or lessen the spread of dangerous, contagious, infectious or communicable diseases is concerned, and such control by Congress excludes from that field any action by the several States with respect thereto, by reason whereof said order is null and void, in that it contravenes the provisions of the commerce clause of the Constitution of the United States;

2. That said order imposes a direct burden upon interstate commerce, in contravention of the commerce clause;

3. That Sections 72 and 74 of the New York Agriculture and Markets Law afford no sanction for said order.

Upon their bill of complaint, which prayed for an injunction restraining defendant from enforcing said order, and upon an affidavit, plaintiffs obtained from District Judge Cooper a temporary restraining order against defendant, and gave due notice of application for an interlocutory injunction. At the hearing, before Circuit Judge Augustus N. Hand, District Judge Cooper, and District Judge Bryant, plaintiffs pressed their application for an interlocutory injunction; defendant filed and served his answer to the bill of complaint, as amended at the hearing; the parties adduced their proofs; plaintiffs moved upon the pleadings and

proofs for a final decree granting to them the relief prayed in the bill of complaint; defendant moved upon the pleadings and proofs for a final decree dismissing the bill of complaint upon the merits; and the Court took the respective motions under advisement, reserving decision thereon. In due course, pursuant to a prevailing opinion by Judge Hand, with whom Judge Bryant concurred (Judge Cooper dissenting in an opinion), and upon findings made in accordance with Equity Rule 70½, plaintiffs' contentions above stated were overruled and a final decree was entered, dismissing the bill of complaint, from which final decree plaintiffs have appealed.

VI.

Cases Sustaining Jurisdiction:

The constitutional validity of a State administrative order, made by a State administrative board or commission composed of one person, may be tested and a direct appeal to this Court taken, under Section 266, Judicial Code, in an action to enjoin enforcement of the order.

Oklahoma Gas Co. v. *Russell*, 261 U. S. 290, 292;
Herkness v. *Irion*, 278 U. S. 92, 93-94.

Such person may be sued individually, also, where he asserts authority of law for his acts.

Reagan v. *F. L. & Tr. Co.*, 154 U. S. 362, 390-1.

Respectfully submitted.

J. E. MESSERSCHMIDT,
ROBERT E. WHALEN,
Counsel for Appellants.

Dated March 2, 1933.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 760

AARON MINTZ AND LOUIS MINTZ, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MINTZ & MINTZ, APPELLANTS,

vs.

CHARLES H. BALDWIN, INDIVIDUALLY AND AS COMMISSIONER OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK.

JOINT MOTION TO ADVANCE.

The present litigation arose out of a controversy between the appellants and the appellee as to the validity of an order promulgated by the appellee, on the 29th day of August, 1932, in pursuance of Sections 72 and 74 of the Agriculture and Markets Law of the State of New York. The order, which took effect October 1, 1932, provided that all cattle over six months of age imported into the State of New York for dairy or breeding purposes should come directly from herds certified to be free from Bang's disease by the chief

livestock sanitary official, by whatever name known of the country, province or State of origin.

On or about the 21st day of October, 1932, the appellant shipped from the State of Wisconsin to one Edgar Bartlett, at Sharon Station in the State of New York, twenty head of grade cattle for dairy and breeding purposes, all over six months of age, which complied with all other health regulations, including a certificate authenticated by the chief livestock sanitary official of the State of Wisconsin, showing the name and address of the laboratory or person making the last blood test on said twenty head of cattle, with a complete statement that the results of such test showed each of said animals to be free from Bang's disease. It was considered insufficient by the Department of Agriculture and Markets, because as required by said order it did not certify that the herd from which these cattle came was free from Bang's disease, and because of this fact the appellants were forbidden by the New York Commissioner of Agriculture and Markets to deliver any of them to the purchaser. By reason of the last order the appellants were obliged to reship the cattle and transport them to a point outside the State of New York.

The bill of complaint alleged in addition to the above facts that under the Act of Congress of February 2, 1903 (21 U. S. Code, §§ 120-122), and the Act of Congress of March 3, 1905 (21 U. S. Code, §§ 123-126), Congress had assumed control of the entire field of transportation and quarantine of livestock which is the subject of commerce between the States in so far as action to prevent or lessen the spread of dangerous

contagious or communicable diseases is concerned, and that such control by Congress excluded from the field any action by the several States in respect thereto, and rendered the order of the Commissioner of Agriculture and Markets void, because of contravention of the provisions of the interstate commerce clause of the Constitution of the United States. The appellants asked for both a preliminary and a final injunction restraining the appellee and his agents from enforcing the order, and from subjecting to inspection, examination and quarantine, after interstate transportation shall have been completed, animals transported without a certificate that they have come from a herd free from Bang's disease.

The hearing upon the bill of complaint for the temporary injunction was before a statutory court of three judges, in accordance with the provisions of Section 266 of the Judicial Code. The appellee filed an answer, in which he did not deny for the purpose of this litigation that the appellants will suffer irreparable damage if the order therein set forth is continued to be enforced, and that the amount involved is more than $3,000, and prayed that the relief asked in the bill of complaint be denied, and for costs therein incurred. Affidavits were filed as proof, and the motion for the preliminary injunction was thereupon denied and the bill of complaint dismissed, for the reason that the order of the Commissioner of Agriculture and Markets appears to have been validly issued pursuant to Sections 72 and 74 of the Agriculture and Markets Law of the State of New York, under a valid exercise of the police power of the State. The temporary restrain-

ing order granted to the appellants was dismissed. The determination of the court was by a two-to-one decision.

As the matter stands, therefore, the appellee is empowered to enforce his said order against the appellants, in accordance with the construction of law believed by the appellee to be correct, and approved in the opinion of the court below. The appellants, on the other hand, are deprived of continuing their valuable business in the State of New York, and are obliged to suffer the ill effects of the said order, which appellants believe to be invalid and in violation of the commerce laws of the United States, and the statutes of the United States.

The case is one in which public interest in a speedy settlement has already obtained recognition in the provisions contained in Section 266 of the Judicial Code. It is common knowledge that the State of New York and the State of Wisconsin are the leading dairy States in the United States. This case not only affects the appellants in this case, but likewise affects all other dealers and shippers of bovine animals for dairy and breeding purposes from the State of Wisconsin to the State of New York, and likewise from all other States to the State of New York. The Legislature of the State of Wisconsin thereupon, on February 14, 1933, passed a joint resolution, No. 39-S, in which it is alleged that, Whereas the State of New York in particular has by rule of its Department of Agriculture and Markets stopped the shipping of Wisconsin cattle into that State, causing a loss to dairymen of this State of from four to five thousand dollars per day,

and, Whereas, the Wisconsin Department of Agriculture and Markets, in cooperation with the livestock breeders and farmers of the State, instituted an action in the United States District Court for the Northern District of New York, entitled "Aaron Mintz and Louis Mintz, copartners, doing business under the firm name and style of Mintz & Mintz, plaintiffs and appellants, *against* Charles H. Baldwin, individually and as Commissioner of Agriculture and Markets of the State of New York, defendant and appellee", it is

Resolved, That the Attorney General is authorized and directed to prosecute this case to final decision in the Supreme Court of the United States.

It therefore appears that both the State of Wisconsin and the State of New York are vitally interested in having this controversy heard and argued and settled without unnecessary delay. Therefore, the parties to this action jointly move that the above entitled cause be advanced for early hearing by this Court.

JAMES E. FINNEGAN,
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R. M. ORCHARD,
J. E. MESSERSCHMIDT,
Assistant Attorneys General of Wisconsin,
Counsel for the Appellants.
HENRY S. MANLEY,
Counsel to the Department of Agriculture and Markets of the State of New York;
JOHN J. BENNETT, JR.,
Attorney General of the State of New York,
Counsel for the Appellee.